THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.4300 of 2004

Date: 22-02-2007.

Between :

M/s.NCC – SMC (JV), Hyderabad,
rep. by its Authorised Signatory.

.....Petitioner

And

The Commercial Tax Officer, Punjagutta Circle,
Hyderabad & Others.

.....Respondents.

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AND
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ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Section 5-H of the A.P.General Sales Tax Act, 1957 (for short 'the APGST Act') and Rule 17-I of the A.P.General Sales Tax Rules, 1957 (for short 'the APGST Rules') have been challenged in this writ petition. Section 5-H of the APGST Act was subject matter of a challenge earlier also before this Court and the Constitutional validity of this provision was upheld by a judgment of this Court in **Media Communications v. Government of A.P.**[1]. The learned counsel for petitioner, however, submits that later the matter was considered by the Supreme Court in **Steel Authority of India Ltd. v. State of Orissa**[2]. An identical provision of the Orissa Sales Tax Act was under challenge, the proviso being Section 13-AA. We have

perused Section 13-AA of the Orissa Act and also Section 5-H of the APGST Act and they are paramateria. The Supreme Court struck down Section 13-AA of the Orissa Act as unconstitutional. Therefore, this Court has no option but to follow the judgment of Supreme Court and strike down Section 5-H of the APGST Act as unconstitutional.

Since Rule 17-I of the APGST Rules is only a rule providing a mechanism for application of Section 5-H, therefore, the Rule consequentially, is also struck down. The learned Special Government Pleader for Commercial Tax, however, submits that the APGST Act is not in operation after the A.P.Value Added Tax Act, 2005 was introduced from 01.04.2005, therefore, striking down of Section 5-H of the APGST Act would be only of academic interest, which is controverted by the learned counsel for petitioner, who submits that assessments are still pending and in case the assessing officers find that tax was not deducted at source, then they would also be liable to pay penalties. He further submits an apprehension that after striking down Section 5-H of the APGST Act, there would be effect on pending assessments. We make it clear that no assessment is made under Section 5-H of the APGST Act. Assessments are only made under Section 5-F of the APGST Act and striking down of Section 5-H of the

APGST Act would have no effect on the assessments being made by the authorities concerned in accordance with law.

Writ petition is accordingly allowed.

BILAL NAZKI, J

22nd February 2007.

NOOTY RAMAMOHANA

RAO, J
ajr

[1] 105 STC 227
[2] 118 STC 297